

Calendar No. 160

109TH CONGRESS
1ST SESSION

S. 1375

To amend the Indian Arts and Crafts Act of 1990 to modify provisions relating to criminal proceedings and civil actions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 11, 2005

Mr. MCCAIN (for himself, Mr. DORGAN, and Mr. KYL) introduced the following bill; which was read the first time

JULY 12, 2005

Read the second time and placed on the calendar

A BILL

To amend the Indian Arts and Crafts Act of 1990 to modify provisions relating to criminal proceedings and civil actions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Indian Arts and Crafts
5 Amendments Act of 2005”.

1 **SEC. 2. INDIAN ARTS AND CRAFTS.**

2 (a) CRIMINAL PROCEEDINGS; CIVIL ACTIONS; MIS-
3 REPRESENTATIONS.—Section 5 of the Act entitled “An
4 Act to promote the development of Indian arts and crafts
5 and to create a board to assist therein, and for other pur-
6 poses” (25 U.S.C. 305d) is amended to read as follows:

7 **“SEC. 5. CRIMINAL PROCEEDINGS; CIVIL ACTIONS.**

8 “(a) DEFINITION OF FEDERAL LAW ENFORCEMENT
9 OFFICER.—In this section, the term ‘Federal law enforce-
10 ment officer’ includes—

11 “(1) a Federal law enforcement officer (as de-
12 fined in section 115(c) of title 18, United States
13 Code); and

14 “(2) with respect to a violation of this Act that
15 occurs outside Indian country (as defined in section
16 1151 of title 18, United States Code), an officer
17 that has authority under section 3 of the Indian
18 Law Enforcement Reform Act (25 U.S.C. 2802),
19 acting in coordination with a Federal law enforce-
20 ment agency that has jurisdiction over the violation.

21 “(b) CRIMINAL PROCEEDINGS.—

22 “(1) REFERRAL.—On receiving a complaint of
23 a violation of section 1159 of title 18, United States
24 Code, the Board may refer the complaint to any
25 Federal law enforcement officer for appropriate in-
26 vestigation.

1 “(2) FINDINGS.—The findings of an investiga-
2 tion under paragraph (1) shall be submitted to—

3 “(A) the Attorney General; and

4 “(B) the Board.

5 “(3) RECOMMENDATIONS.—On receiving the
6 findings of an investigation in accordance with para-
7 graph (2), the Board may—

8 “(A) recommend to the Attorney General
9 that criminal proceedings be initiated under
10 section 1159 of that title; and

11 “(B) provide such support to the Attorney
12 General relating to the criminal proceedings as
13 the Attorney General determines appropriate.

14 “(c) CIVIL ACTIONS.—In lieu of, or in addition to,
15 any criminal proceeding under subsection (a), the Board
16 may recommend that the Attorney General initiate a civil
17 action pursuant to section 6.”.

18 (b) CAUSE OF ACTION FOR MISREPRESENTATION.—
19 Section 6 of the Act entitled “An Act to promote the devel-
20 opment of Indian arts and crafts and to create a board
21 to assist therein, and for other purposes” (25 U.S.C.
22 305e) is amended—

23 (1) by striking subsection (d);

24 (2) by redesignating subsections (a) through (c)
25 as subsections (b) through (d), respectively;

1 (3) by inserting before subsection (b) (as redес-
 2 ignated by paragraph (2)) the following:

3 “(a) DEFINITIONS.—In this section:

4 “(1) INDIAN.—The term ‘Indian’ means an in-
 5 dividual that—

6 “(A) is a member of an Indian tribe; or

7 “(B) is certified as an Indian artisan by an
 8 Indian tribe.

9 “(2) INDIAN PRODUCT.—The term ‘Indian
 10 product’ has the meaning given the term in any reg-
 11 ulation promulgated by the Secretary.

12 “(3) INDIAN TRIBE.—

13 “(A) IN GENERAL.—The term ‘Indian
 14 tribe’ has the meaning given the term in section
 15 4 of the Indian Self-Determination and Edu-
 16 cation Assistance Act (25 U.S.C. 450b).

17 “(B) INCLUSION.—The term ‘Indian tribe’
 18 includes an Indian group that has been formally
 19 recognized as an Indian tribe by—

20 “(i) a State legislature;

21 “(ii) a State commission; or

22 “(iii) another similar organization
 23 vested with State legislative tribal recogni-
 24 tion authority.

1 “(4) SECRETARY.—The term ‘Secretary’ means
2 the Secretary of the Interior.”;

3 (4) in subsection (b) (as redesignated by para-
4 graph (2)), by striking “subsection (c)” and insert-
5 ing “subsection (d)”;

6 (5) in subsection (c) (as redesignated by para-
7 graph (2))—

8 (A) by striking “subsection (a)” and in-
9 serting “subsection (b)”;

10 (B) by striking “suit” and inserting “the
11 civil action”;

12 (6) by striking subsection (d) (as redesignated
13 by paragraph (2)) and inserting the following:

14 “(d) PERSONS THAT MAY INITIATE CIVIL AC-
15 TIONS.—

16 “(1) IN GENERAL.—A civil action under sub-
17 section (b) may be initiated by—

18 “(A) the Attorney General, at the request
19 of the Secretary acting on behalf of—

20 “(i) an Indian tribe;

21 “(ii) an Indian; or

22 “(iii) an Indian arts and crafts orga-
23 nization;

24 “(B) an Indian tribe, acting on behalf of—

25 “(i) the tribe;

1 “(ii) a member of that tribe; or

2 “(iii) an Indian arts and crafts orga-
3 nization;

4 “(C) an Indian; or

5 “(D) an Indian arts and crafts organiza-
6 tion.

7 “(2) DISPOSITION OF AMOUNTS RECOVERED.—

8 “(A) IN GENERAL.—Except as provided in
9 subparagraph (B), an amount recovered in a
10 civil action under this section shall be paid to
11 the Indian tribe, the Indian, or the Indian arts
12 and crafts organization on the behalf of which
13 the civil action was initiated.

14 “(B) EXCEPTIONS.—

15 “(i) ATTORNEY GENERAL.—In the
16 case of a civil action initiated under para-
17 graph (1)(A), the Attorney General may
18 deduct from the amount—

19 “(I) the amount of the cost of
20 the civil action and reasonable attor-
21 ney’s fees awarded under subsection
22 (c), to be deposited in the Treasury
23 and credited to appropriations avail-
24 able to the Attorney General on the

1 date on which the amount is recov-
 2 ered; and

3 “(II) the amount of the costs of
 4 investigation awarded under sub-
 5 section (c), to reimburse the Board
 6 for the activities of the Board relating
 7 to the civil action.

8 “(ii) INDIAN TRIBE.—In the case of a
 9 civil action initiated under paragraph
 10 (1)(B), the Indian tribe may deduct from
 11 the amount—

12 “(I) the amount of the cost of
 13 the civil action; and

14 “(II) reasonable attorney’s fees.”;
 15 and

16 (7) in subsection (e), by striking “(e) In the
 17 event that” and inserting the following:

18 “(e) SAVINGS PROVISION.—If”.

19 (c) CONFORMING AMENDMENT.—Section 1159(c) of
 20 title 18, United States Code, is amended by striking para-
 21 graph (3) and inserting the following:

22 “(3) the term ‘Indian tribe’—

23 “(A) has the meaning given the term in
 24 section 4 of the Indian Self-Determination and

1 Education Assistance Act (25 U.S.C. 450b);
2 and

3 “(B) includes an Indian group that has
4 been formally recognized as an Indian tribe
5 by—

6 “(i) a State legislature;

7 “(ii) a State commission; or

8 “(iii) another similar organization
9 vested with State legislative tribal recogni-
10 tion authority; and”.

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